



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Implement
the Commission's Procurement Incentive
Framework and to Examine the Integration
of Greenhouse Gas Emissions Standards into
Procurement Policies.

R.06-04-009

**COMMENTS OF LS POWER GENERATION, LLC
ON FINAL WORKSHOP REPORT:
INTERIM EMISSION PERFORMANCE STANDARD PROGRAM FRAMEWORK
R.06-04-009, JUNE 21-23, 2006
PREPARED BY COMMISSION STAFF OCTOBER 2, 2006**

October 18, 2006

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On October 2, 2006, Staff of the California Public Utilities Commission ("Commission") issued the *Final Workshop Report: Interim Emission Performance Standard Program Framework* ("Final Workshop Report"). The Final Workshop Report presents a Final Staff Proposal for the Administrative Law Judge who is expected to issue a Draft Decision on the Interim Emission Performance Standard ("EPS") in mid-December, and ultimately for a Final Opinion by the Commission sometime in early 2007. The EPS will establish policies and procedures pursuant to which the Commission will implement the recently enacted Senate Bill 1368 ("SB 1368").

In these comments on the Final Workshop Report, LS Power Generation, LLC ("LS Power") echoes the Joint Comments of Constellation, NRG Energy, Inc. and Mirant ("Joint Commenters") in their recommendations concerning how the EPS should apply to the retained generation of the Investor Owned Utilities ("IOUs").¹ Specifically, LS Power shares the concerns expressed by the Joint Commenters that the Commission's EPS policies should not result in significantly differing application of the EPS simply due to the form of asset ownership.

¹ LS Power has reviewed, and agrees with, Section II.B of the Joint Comments.

This issue arises in the Final Workshop Report, which provides, on one hand, that non-IOU owned existing generation is subject to the gateway screen at any time it executes a covered contract with a jurisdictional Load Serving Entity (“LSE”), whether or not any major renovations are contemplated with respect to that contract. On the other hand, IOU-owned assets that are committed to serve IOU load would only be subject to additional gateway reviews if major renovations are pursued. Treating similar facilities differently based solely on whether there is an IOU ownership interest is unreasonable as it creates a competitive advantage for IOUs. Put simply, in light of the IOUs current trend in shorter term contracting with suppliers, non-IOU owned assets can be expected to be subjected to the EPS gateway multiple times with each contract renewal, while utility-owned assets will likely only see the EPS gateway once, when initially proposed to the Commission. As described in more detail by the Joint Commenters, such an unfair advantage not only goes against public policy, but is contrary to the overarching GHG goals of California as expressed in SB 1368 and AB 32.

LS Power provides these comments to assist in developing the record on the policy and implementation issues associated with the Commission’s consideration of an interim GHG EPS. Any adopted EPS policy should avoid a structure where the application of the policy to various covered generation assets differs significantly by the ownership structure of those assets. This may be accomplished by treating IOU-owned assets like other LSE procurement contracts, regardless of the ownership interests behind such contracts. LS Power urges the Commission to reject arguments advancing an unfair competitive advantage for IOU-owned generation by assuring that all generation subject to the EPS will face similar burdens.

Respectfully submitted,

October 18, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Comments of LS Power Generation, LLC On Final Workshop Report: Interim Emission Performance Standard Program Framework R.06-04-009, June 21-23, 2006 Prepared by Commission Staff October 2, 2006* on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses or who were unable to receive the e-mail transmittal were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on October 18, 2006 at Sacramento, California.

/s/

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